

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3962 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

H J OZA

Versus

DIRECTOR GENERAL OF POLICE AND INSPECTOR GENERAL OF POLICE

Appearance:

MR KB PUJARA for Petitioner

Mr. S.K. Patel, Ld. Govt. Counsel for Res. No. 1, 2, 3

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 09/07/1999

ORAL JUDGEMENT

The petitioner had joined the police force as a Constable in year 1951 and came to be promoted as the Head Constable in year 1959. He was able to earn further promotion as the PSI in 1963, and lastly came to be promoted as the Police Inspector in year 1974. The petitioner came to be placed under suspension with effect from May 13, 1980 by the Respondent No.1 on the basis of

an alleged misconduct involving him in a corruption case. The said incident was alleged to have taken place on April 13, 1980. The petitioner was put on trial and came to be convicted by the Special Judge in Special Case No. 5 of 1980. Any how this Court was pleased to acquit him of all the charges in Criminal Appeal No. 899 of 1981. The petitioner later on came to be reinstated in pursuance of the orders of this Court dated December 26, 1983 in Spl.C.A. No. 5475 of 1983 by the subsequent order dated February 28, 1984 passed by the Respondent No.1. The entire suspension period of the petitioner from May 14, 1980 to January 17, 1984 was ordered to be treated as on duty for all the purposes. Any how the petitioner was not paid the increments for the intervening period during which he was under suspension, and therefore he had made several written representations for the above said benefit. In the Departmental Inquiry the petitioner came to be exonerated. He has been given to understand that the question regarding benefits during which he was under suspension could be examined only after the departmental proceedings are over. It is not in dispute that now he has been exonerated. This position becomes amply clear from the affidavit in reply filed by the Under Secretary to the Government of Gujarat, Home Department. Therefore it appears very clearly that the petitioner would be entitled to all the increments which he would have otherwise been obtained during this period of suspension, namely March 14, 1980 to January 17, 1984. Looking to the affidavit in reply it appears that the above said benefit must be granted to him.

One of the prayers in the petition was for quashing the departmental inquiry against him. But when he has been exonerated in a departmental inquiry the said relief would no longer survive. The petitioner is asking for a third relief also. The petitioner came to be compulsorily retired with effect from May 09, 1986. The above said action is challenged by the petitioner in this petition. The say of the respondents in the affidavit referred to above is that under the Rules and the G.R. dated October 25, 1963, the Government is always competent to decide whether an employee could be continued beyond the age of 55 years. According to them the G.R. dated November 02, 1976 would say that an overall assessment of the record of last 8 to 10 years reflecting from the Confidential Reports of the Government servant is required to be seen. It is further stated that his performance should be atleast " good " for continuing him in service beyond the age of 55 years. Further averment in the affidavit in reply is that the

Government in the Home Department had reviewed the case of the petitioner for the first time for this purpose, and after going through the records of the petitioner, it was not found a case to be of positive merits and therefore the Government had taken the decision to retire him premature. It is also said that the Government decision came to be conveyed to the petitioner.

The contention coming from the Ld. counsel for the petitioner Mr. Pujara is that even if it is accepted that, for the purpose of compulsory retirement, the service record of last ten years, as being reflected from the C.R. of the petitioner, were to be taken in to consideration, then also the concerned respondent should not have come to the conclusion that his performance was not 'good' because out of last eight to ten years the petitioner employee was under suspension for a period of four years. The contention coming from the Ld. counsel is that when the petitioner employee was under suspension he was undoubtedly not discharging any duty in the cadre of PI and there could not be any confidential report qua his service for this period. In other words the contention coming from the Ld. counsel is that, the say of the Government that he was not found to be of good performance on the basis of the C.R. of last 8 to 10 years cannot be accepted because, the same is based upon a total non application of mind and on the basis of the consideration of certain so called material which never existed. Ld. Govt. counsel Mr. Patel who appears for the respondent has tried to meet with this contention coming from Ld. counsel Mr. Pujara only unsuccessfully. The respondents are not in a position to show as to how the Government could have come to the conclusion that on the basis of the C.R. of 8 to 10 years the performance of the petitioner employee was such which would require him to be retired compulsorily in public interest. This decision of the respondents therefore appear to be unsustainable and the same requires to be quashed.

Therefore the present petition succeeds in part and the same requires to be partly allowed. The petitioner shall be entitled to all the consequential benefits for the period during which he was under suspension. This period (for the purpose of clarity) should be May 14, 1980 to January 17, 1984. These consequential benefits shall be made available to the petitioner without any further delay and at any rate within a period of three months hereof.

The petitioner is also entitled to be treated as on duty till the attaining of the age of superannuation

which would be 26th February 1989. All the benefits resulting from this conclusion should also be made available to the petitioner within the above said time frame. The above said benefit shall be made available to the petitioner employee within the said time frame, along with the interest at the rate of ten percent per annum.

This petition succeeds to the above said extent and rule is made absolute to the said extent only. No order as to costs.

/vgn.